

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**MATTHEW GILMER**

**Plaintiff**

**v.**

**T.R FRANKLIN, INC. d/b/a TIN ROOF II  
OR TIN ROOF 2, JASON SHEER, KYLE  
McPHEE, GREG ROMINE, LARSEN  
McCOLL PARTNERS, LP, SMW  
CAROTHERS, LLC, NDG CAROTHERS  
LLC, NDG PROPERTIES, INC., GREGORY  
HANSON, STEWART CROSS, JOSHUA  
EDWARDS, and IAN HERRIN,**

**Defendants**

**No. 3:10-cv-0969**

**JUDGE CAMPBELL**

**Magistrate Judge Brown**

**AFFIDAVIT OF RALPH W. WITHERSPOON**

**COMES NOW** Ralph W. Witherspoon, being duly sworn according to law, and who would depose and state as follows:

1. My name is Ralph W. Witherspoon. I am over 18 years of age and I make this affidavit upon my personal knowledge.
2. I have been board certified in security management since 1985 by the American Society for Industrial Security (now ASIS-International). Additionally, I am designated as a certified security consultant by the International Association of Professional Security Consultants.
3. The methodology used by me in analyzing premises security liability cases, and used by me in this case, is consistent with good and accepted practice within the security

industry and has been accepted as required by FRE 702 pursuant to *Childress v. Kentucky Oaks Mall*, 2007 WL 2772299 (W.D. KY 2007).

4. I have given testimony either at deposition or trial as a security expert in fourteen cases within the past four years.
5. I was retained by counsel representing SMW Carothers, LLC, NDG Carothers, LLC and NDG Properties, Inc. to retrospectively assess the security issues related to the these defendants in this matter.
6. I have reviewed documents pertaining to Matthew Gilmer v. TR Franklin Inc. et al as listed in Exhibit B of my Rule 26 disclosure.
7. After reviewing the documents listed in Exhibit B of my Rule 26 disclosure, in accordance with accepted methodology, it is my opinion that on or before October 17<sup>th</sup> and 18<sup>th</sup> 2009, Defendants' SMW Carothers, LLC, NDG Carothers, LLC and NDG Properties, Inc. had no reason to reasonably foresee, and did not foresee, a major violent incident occurring at its two Carothers shopping plazas, particularly the Tin Roof II restaurant/bar as they were not aware of any similar incidents in or around the two plazas during their approximately 2-3 years of operation.
8. Given the very low crime rate at the plaza, Defendants SMW Carothers, LLC, NDG Carothers, LLC and NDG Properties, Inc. security measures of adequate exterior lighting frequently monitored, trimmed shrubbery and weekly inspections or observations by management were reasonable under the circumstances and met the accepted standard of care owed by a property manager/owner to its invitees to protect invitees from harm, especially given the reported relatively low crime rate in the area.

9. It my opinion, no additional security measures were needed by these property owner/management Defendants.
10. Had I known all the given information and been consulted prior to this incident, I would not have advised these Defendants to implement any different or additional security measures.

FURTHER AFFIANT SAITH NOT.

STATE OF Ohio,  
COUNTY OF Cuyahoga

Ralph W. Witherspoon  
RALPH W. WITHERSPOON

Sworn to and subscribed before me, the undersigned Notary Public, this 14 day of September, 2012.

Gordon R. Friedrich  
NOTARY PUBLIC

My Commission Expires

  /  /  



GORDON R. FRIEDRICH  
Attorney At Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission Has No  
Expiration Date  
Section 147.03 O.R.C.

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of September, 2012 a copy of the forgoing Affidavit of Ralph W. Witherspoon was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system. The parties to be served are as follows:

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/s/ Warren M. Smith

**WARREN M. SMITH**